It was held in *Trager* v. *Webster*, 174 Mass. 580, 55 N. E. 318, that a return of service might be overthrown by the uncorroborated testimony of the plaintiff. The trend of the modern cases seems to be towards the doctrine that the return of an officer to a writ is only *prima facie* evidence of the facts stated therein, and that when a judgment had been obtained by means of a false return and without notice to the defendant, equity will grant relief. *Kochman* v. *O'Neil*, 202 Ill. 110; *Wilcke* v. *Duross*, 144 Mich. 243, 107 N. W. 907, 115 Am. St. Rep. 394; *Goble* v. *Brennenman*, 75 Neb. 309; *Emerson* v. *Gray* (Del. Ch.), 63 Atl. 768; *DuBois* v. *Clark*, 12 Colo. App. 220, 55 Pac. 750.

TAXATION—ESTOPPEL TO RAISE CONSTITUTIONAL QUESTION.—A landowner signed a petition asking for the construction of a ditch, knew of the procedure in its establishment, saw the ditch being constructed, acquiesced in its location, and made no protest until called upon to pay his assessment. He then instituted an action to restrain defendant from enforcing and collecting the assessment against his land on the ground that the law under which the ditch was constructed was unconstitutional. *Held*, that the plaintiff, by his actions, is estopped from questioning the constitutionality of the law under which the ditch was constructed. *De Noma* v. *Murphy et al.* (S. D., 1911), 133 N. W. 703.

Often a law will be held valid which otherwise might have been held invalid, if the party making the objection had not by prior acts precluded himself from being heard in opposition. *Pierce* v. *Somerset Ry.*, 171 U. S. 641, 43 L. Ed. 316. 8 CYC. 791. This rule is almost universally applied to property rights, and is even applied to a limited extent to criminal law. COOLEY, CONSTITUTIONAL LIMITATIONS, Ed. 7, p. 250. It has been accepted by practically all of the States. COOLEY, TAXATION, Ed. 2, p. 819; *Ferguson* v. *Landram*, 5 Bush 230, 96 Am. Dec. 350; *Andrus* v. *Board of Police*, 41 La. Ann. 697, 6 South. 603, 5 L. R. A. 681; *Dupre* v. *Board of Police*, 42 La. Ann. 802, 8 South, 593; *People* v. *Murray*, 5 Hill 468; *Minneapolis, St. P. & S. St. M. Co.* v. *Nester*, 3 N. D. 480, 57 N. W. 510; *State* v. *Mitchell*, 31 Ohio St. 592. The plaintiff in the principal case, or any one in an analogous position, is, theoretically at least, not affected by the unconstitutionality. Provisions of constitutions which would apply in such cases are intended to protect the citizen from forced contributions levied *in invitum* beyond any power possessed by the authorities. The plaintiff cannot be considered as subject to an act *in invitum* because of his previous actions. The facts necessary to constitute a waiver of the right to raise the question of unconstitutionality, varies in the different jurisdictions. The general view is well illustrated by the Ohio decisions. Mere silence, even with knowledge of conditions, is not sufficient in itself. *Counterman* v. *Dublin Tp.*, 38 Ohio St. 515. Even signing the petition, if nothing more appears, may not be sufficient, *Tone* v. *Columbus*, 39 Ohio St. 281. (But see *City of Columbus* v. *Sohl*, 44 Ohio St. 479, 8 N. E. 299), though such persons might be estopped from enjoining the collection of assessments of costs proceeding from the petition proceedings themselves. A few courts give the rule a wide range; for example, even carrying it on to persons purchasing land with its burdens, where such land has been bene-

fited as in the principal case. *Hoertz* v. *Jefferson Southern Pond Drainage Co.*, 119 Ky. 824, 84 S. W. 1141. That the estoppel does not preclude the raising of the question of jurisdiction, see *Edmonds Land Co.* v. *City of Edmonds* (Wash. 1911), 119 Pac. 192, noted on p. 338 *ante*.

WILLS—REMAINDER—DISCLAIMER OF LIFE ESTATE—ACCELERATION.—Testator devised freehold estates to the use of his son J. for life, with remainder to his sons successively in tail male, with remainder to his grandson, Walter, for life, with remainders over. J. was married but there was no prospect of any issue and he disclaimed the life estate. *Held*, that Walter's estate for life in remainder was not accelerated, but that the rents and profits of the disclaimed estate during the life of J., so long as he had no son, formed part of the residuary estate of the testator. *In re Sir Walter Scott. Scott* v. *Scott* (1911), 2 Ch. D. 374.

The effect of J.'s renunciation of his life estate would at the common law have accelerated the remainders over. Late cases consider this rule to be supported by testator's intention, for it is presumed that he would wish the estate over to take effect upon any event removing the prior estate. ROOD, WILLS, § 576. *Blatchford* v. *Newberry*, 99 Ill. 11, and so a gift to X while single, with gift over on his death, was held to pass the estate to the remainderman immediately on X's marriage. *Bruch's Estate*, 185 Pa. St. 194, 39 Atl. 813. A contingent remainder such as that to the sons of J. successively, J. having none, required a particular estate to support it, 1 FEARNE, CONTINGENT REMAINDERS, Ed. 10, p. 281, for the fee could not by the common law be held in abeyance. Thus prior to the Contingent Remainders Act, 1877, the disclaimer by J. would have destroyed the contingent remainder. *Chudleigh's Case*, 1 Coke 120. *Faber* v. *Police*, 10 S. C. 376. This act, being passed to preserve contingent remainders, otherwise valid, from destruction by failure of the particular prior estate, had the same effect in the court's opinion as the appointment of trustees to preserve contingent remainders. Trustees, if they had been appointed, would have held the estate during J.'s life for the benefit of a possible future son, although there was no probability of one being born. (See *Carrick* v. *Errington*, 2 P. Wms. 361. *Hopkins* v. *Hopkins*, 1 Atk. 597.) The effect of the statute to preserve the contingent remainders was in like manner to prevent the coming into enjoyment and possession of Walter's vested remainder, for as the decision states it is "impossible that there could be an estate in remainder which might afterwards come to an end so as to let in an estate previously limited." The law of real property does not recognize the defeasance or interruption in enjoyment of a vested remainder to allow of the vesting in possession of a previously destroyed contingent remainder. 2 WASHBURN, REAL PROPERTY, Ed. 4, 543.